IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF NORTH CAROLINA
Asheville Division
Case No.: 1:07 -cv-00231-LHT-DLH

C. BURGESS
Plaintiff,
vs.

EFORCE MEDIA, INC., IWIZARD HOLDING, INC., ADKNOWLEDGE, INC., BASEBALL EXPRESS, INC., ALLEN-EDMONDS SHOW CORPORATION, INTERSEARCH GROUP, INC., TRUSCO MANUFACTURING COMPANY, PRICEGRABBER.COM, INC., SHOPZILLA, INC., DAZADI, INC., SIX THREE ZERO ENTERPRISES, LLC,

Defendants.

MOTION TO DISMISS BY DEFENDANT EFORCE MEDIA, INC.

Motion to Dismiss - Lack of Standing

NOW COMES the Defendant EFORCE MEDIA INC., and moves the Court pursuant to Rule 12(b)(6) for an Order dismissing the Plaintiff's complaint for failure to state a claim upon which relief can be granted on the specific grounds that the Plaintiff's claims are preempted by the Federal CAN-SPAM Act, which does not provide a private right of action to non-Internet Access Service providers such as the Plaintiff, who has additionally not suffered "adverse effects", as required by the Act.

Motion to Dismiss Punitive Damages - Failure to Plead Aggravating Factors

NOW COMES the Defendant EFORCE MEDIA INC., and moves the Court

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pursuant to Rule 12(b)(6) for an Order dismissing the Plaintiff's request for punitive damages for failure to state a claim upon which relief can be granted on the specific grounds that the Plaintiff has failed to plead any facts demonstrating the requisite aggravating factors of willful or wanton conduct.

This the 19th Day of July, 2007.

TEMPLETON & RAYNOR, P.A.

s/Kenneth R. Raynor
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CERTIFICATE OF SERVICE

The undersigned does hereby certify that he has this day duly noticed electronically through the CM/ECF system, and by serving a copy of the **Motion to Dismiss by Defendant Eforce Media, Inc.** by depositing a copy of the same in the United States Mail, first-class, postage prepaid, the following attorney or attorneys for said parties:

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(Represents Dazadi, Inc.)

This the 19 Day of July, 2007.

/s/Kenneth R Raynor
Kenneth R Raynor
TEMPLETON & RAYNOR, P.A.